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Environmental Protection Agency

2200 Churchill Road, Springfield, Illinois 62706

217/782-5544

September 7, 1982

E. ST. LOUIS / SCA - MILAM

Ms. Ann Carr
Chief, Southern Region
Environmental Control Division
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

US EPA RECORDS CENTER REGION 5



Re: EPA v. SCA Services, Inc., and
SCA Services of Illinois, Inc.
EPA File #2263-A

Dear Ms. Carr:

Enclosed are materials assembled by the Environmental Protection Agency supporting the filing of an enforcement action against SCA Services, Inc., and SCA Services of Illinois, Inc. The Agency requests you to represent it.

If, after you have reviewed these materials, you agree to do so, please advise me in writing. After we have agreed on the draft complaint, I will send you a letter asking you to file the complaint.

If you decide that you cannot represent the Agency in this case, please return the materials to me with a statement of your reasons.

Very truly yours,

Joseph R. Podlewski, Jr.
Joseph R. Podlewski, Jr.
Attorney-Advisor
Enforcement Programs

Enclosure
JRP:bkm
cc: Docket Control

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ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

Illinois Environmental Protection Agency

v.

SCA Services of Illinois, Inc.
and
SCA Services, Inc.

Agency File #2263-A
PC #16304501

Joseph R. Podlewski, Jr.
Attorney-Advisor
Enforcement Programs

I. Description of a Pollution Source

The site which forms the basis for this enforcement action is a sanitary landfill located on a 265 acre tract near the City of East St. Louis in St. Clair County, Illinois. This facility, referred to in Agency files as St. Clair County, East St. Louis/SCA-Milam, is adjacent to and north of Interstate 55, and is bisected by Old Cahokia Creek. Cahokia Canal borders the site on the north. The legal description is as follows:

Section 5, Township 2N., Range 9W. of the 3rd P.M. in St. Clair County, Illinois.

The facility is currently owned and operated by SCA Services of Illinois, Inc., a subsidiary of SCA Services. SCA Services is a Delaware corporation licensed to do business in Illinois. SCA Services of Illinois, Inc., is an Illinois corporation. The latter's address is as follows:

SCA Services of Illinois, Inc.

Landfill Division

2216 Madison Avenue

Granite City, Illinois 62040

The Registered Agent of SCA Services of Illinois is the CT Corporation System, which has its offices at 208 South LaSalle Street, Chicago, Illinois, 60604.

The site is currently operating pursuant to an operating permit granted by the Agency in 1978 (1978-23-OP).

II. Agency History

The history of this site is long and ignominious. Landfilling operations began at the site as early as 1970. In December of 1972, the Agency filed suit against the owner of the site (Milam Corporation) and its lessee (Milam Corporation East) for violations of both the Environmental Protection Act and the Illinois Department of Health's Rules and Regulations for Refuse Disposal Sites and Facilities. The complaint alleged, inter alia, that from 1970-1972 Milam East openly dumped refuse, neglected pre-operational site improvements, unloaded refuse without supervision, failed to comply with requirements concerning spreading and compacting of refuse and application of cover, and deposited hazardous liquids at the site. Following a hearing, the Board found both respondents to be in violation of the Act and the IDPH landfill rules. Milam was assessed a penalty of \$400, and Milam East incurred a \$1,000 penalty (Environmental Protection Agency v. Milam Corporation and Milam Corporation East (1974), PCB 72-485).

In November of 1973, SCA's immediate predecessor, MAL Landfill Corporation, applied for a development permit for the entire 265 acre site. The development permit was issued in February of 1974, and in October of that same year an operating permit was issued (1974-13-OP). Under permit 1974-13-OP, landfilling operations were to commence in an area of the facility south and west of Old Cahokia Creek designated as the "old site." However, as early as 1973, MAL had deposited garbage and other refuse in that area.

In 1978, the Agency filed suit against MAL for both operating and permit violations at the site from 1973-1978. This case was ultimately

settled. In its November 2, 1978, order accepting the terms of the settlement agreement, the Board found MAL to be in violation of various sections of the Environmental Protection Act, as well as a number of Rules of Chapter 7 and of the IDPH's Rules and Regulations for Refuse Disposal Sites and Facilities. The Board revoked permit 1974-13-OP and supplemental permit 76-431 (which provided for commencement of landfill operations in the "new site" north and east of Old Cahokia Creek) and ordered the Agency to issue SCA Services of Illinois, which became MAL's successor in interest on May 31, 1978, a new operating permit incorporating the terms of the August 23, 1978 settlement agreement. A \$10,000 penalty was also imposed upon SCA (Environmental Protection Agency v. MAL Landfill Corporation (1978), PCB 75-327).

On December 8, 1978, the Agency issued SCA a new operating permit pursuant to the board order (permit 1978-23-OP). Under Special Condition 2I of the permit, SCA was to furnish two performance bonds to the Agency to ensure closure of the old site. One of these bonds, for \$300,000, was furnished to ensure the application of two feet of final cover to the old site by September 1, 1979. In light of evidence that two feet of final cover had not been applied to the old site by the September 1, 1979, deadline, the Agency sought forfeiture of the \$300,000 bond in an action filed in the Circuit Court of St. Clair County in January of 1980 (People of the State of Illinois ex cel. Mauzy v. MAL Landfill Corporation, et al., No. 80-MR-13). Following settlement negotiations, an interim order was entered on December 8, 1980, incorporating an agreement by SCA to complete application of final cover to the old site by July 1, 1981. Although SCA's engineer has certified the application of final cover, the

Agency has refrained from granting approval because of densification at the site. Accordingly, the Agency has denied SCA's request to dismiss the bond forfeiture action, and the case is still pending. —

Since the issuance of the new operating permit to SCA in 1978, there have been continuous operating and permit violations at this site. Virtually every inspection report documents a lack of daily and final cover (Special Condition 3A of permit 1978-23-OP and Solid Waste Rule 305(c)). SCA has also repeatedly failed to adequately spread and compact refuse (Solid Waste Rule 303(b)). Violations of the blowing litter and open burning prohibitions have also been frequently documented in Agency inspection reports (Solid Waste Rules 306 and 311). Occasionally, violations for insufficient equipment or personnel (Solid Waste Rule 304), implementation of inadequate measures to control leachate (Rule 314(e)) and inadequate roads (Rule 314(b)) appear. In addition, because Special Condition 3H of permit 1978-23-OP provides that "SCA shall conduct all disposal operations in accordance with all applicable Board Regulations, particularly with respect to depositing, spreading, compacting and covering all refuse," each violation of a Chapter 7 operating rule constitutes a violation of Solid Waste Rule 302. Failure to conduct a groundwater monitoring program in accordance with Special Condition 12 of permit 1978-23-OP is also a violation of Solid Waste Rule 302.

These operating and permit violations, however, are only the tip of the Milam iceberg. Serious, and perhaps incurable, problems exist with the hydrogeology of the site itself. The hydrogeologic problems are best manifested by the history of a special waste area located on the new

site. Late in 1978, SCA received a supplemental permit to operate a special waste area at the Milam landfill (supplemental permit 1978-2217). Containerized special wastes (paint waste from the Chrysler Corporation) were to be disposed of in the special waste area in trenches. However, Agency inspectors noted that the first excavated trench rapidly filled with water during periods when there was little or no precipitation. SCA attempted to solve the recharge problem by sealing trench #1 (the only trench in which barreled waste was encapsulated) with a 10 foot clay liner, contending that a sand lens was responsible for lateral seepage into the trench. However, while the perimeter seal may have effectively deterred lateral migration of groundwater into the trench, groundwater continued to enter the trench vertically under artesian conditions through shallow water bearing sediments located above the fine medium sand aquifer. In a letter dated October 30, 1979, the Agency requested SCA to terminate barrelled waste landfilling in the special waste area and to remove the barrels located there to a secure location. SCA responded that absent proof of migration of contaminants from the special waste site, it would not exhume the barrels. SCA did, however, agree to a cessation of barrel landfilling in the area. The Collinsville Field Operations Section estimates that 800-900 drums of paint waste remain encapsulated in the special waste area under far from ideal hydrogeologic conditions.

Hydrogeologic problems exist throughout the site. Pursuant to SCA's 1978 operating permit, landfilling operations at the facility were to be conducted in three phases. Operations were not to be initiated in Phases II or III before a registered professional engineer certified that

the future fill area was underlaid with at least 10 feet of low permeability clay (see Condition 8 of permit 1978-23-OP). Five borings were conducted in June of 1979 to determine whether the Phase II area satisfied the liner requirement. In all five borings groundwater was encountered within 9 1/2 feet of ground level. This groundwater was also under considerable hydraulic pressure. One of the borings (B-36) revealed a water level of eight feet when the auger was removed. Within an hour the water was at ground level. Nonetheless, SCA's engineer certified the existence of the clay liner and landfilling operations at Phase II commenced. The poor hydrogeology of the site has also resulted in a lack of on-site cover sources, necessitating the utilization of off-site sources for cover.

III. Compliance Efforts

Attempts to get SCA/Milam into compliance inevitably fail, as evidenced by the litigation this site has engendered. Collinsville FOS regularly attempts to get the site into compliance with the Act and Chapter 7 Rules but meets with little success. The most recent meeting of IEPA personnel with SCA representatives concerning the Milam landfill took place on April 28, 1982. At that time, SCA representatives again informed the Agency of the steps SCA was taking to achieve compliance with State law. On the basis of past performance, it is doubtful that much improvement will be observed.

IV. Violations

The following inspection and observation reports by Collinsville FOS document a number of violations of both the Act and the Chapter 7 Solid Waste Rules since the issuance of permit 1978-23-OP in December of 1978.

<u>Date of Inspection</u>	<u>EPA Violation</u>	<u>Chapter 7 Violation</u>
12/18/78	21(a), (b)	306 302
12/20/78	21(a), (b)	302
01/18/79	21(a), (b)	305(c) 311 302
02/01/79	21(a), (b)	305(c) 302
02/13/79	21(a), (b)	305(c) 302
03/08/79	21(a), (b)	305(c) 306 311 302
03/11/79	21(a), (b)	305(c) 311 306 302
03/27/79	21(a), (b)	305(c) 302
04/12/79	21(a), (b)	305(c) 306 302 314(e)
05/14/79	21(a), (b)	305(c) 302
06/18/79	21(a), (b)	305(c) 303(b) 302

Date of InspectionEPA ViolationChapter 7 Violation

06/19/79	21(a),(b)	305(c) 303(a),(b) 302
07/20/79	21(a),(b)	305(c) 303(a),(b) 302
08/30/79	21(a),(b)	303(b) 311 305(c)
10/11/79	21(a),(b)	305(c) 306 302
09/06/79	21(a),(b)	305(c) 302
01/10/80	21(a)	305(b) 303(a),(b) 306 311 302
01/17/80	21(a)	305(c) 303(a),(b) 311 302
01/25/80	21(a)	305(c) 303(a),(b) 302
01/29/80	21(a)	303(b) 302
02/22/80	21(a)	305(c) 303(b) 302 317
04/04/80	21(a)	305(b) 303(b) 304 306 302

Date of InspectionEPA ViolationChapter 7 Violation

04/22/80

21(a)

305(c)

304

306

302

04/28/80

21(a)

314(e)

302

08/25/80

21(a)

302

09/03/80

21(a)

305(c)

303(b)

304

302

11/20/80

21(a)

305(c)

303(b)

306

311

302

01/05/81

21(a)

305(c)

303(b)

302

306

311

314(b)

02/23/81

21(a)

305(c)

302

03/12/81

21(a)

302

305(c)

304

04/14/81

305(c)

302

311

08/27/81

21(a)

302

305(b),(c)

304

01/05/82

21(a),(d)

302

305(c)

303(b)

314(b)

311

<u>Date of Inspection</u>	<u>EPA Violation</u>	<u>Chapter 7 Violation</u>
3/31/82	21(a),(d)	302 305(b),(c) 303(a),(b)
3/31/82	21(a),(d)	302 314(e) 305(b),(c) 303(a),(b)

Letters to SCA from the Agency informing it of non-compliance were sent on the following dates:

12/29/78	04/23/79	10/25/79	03/11/81
01/30/79	05/23/79	01/11/80	04/22/81
02/08/79	06/18/79	01/21/80	08/28/81
02/26/79	06/29/79	04/11/80	01/08/82
03/16/79(2)	08/01/79	12/03/80	04/05/82
04/06/79	09/11/79	01/16/81	

V. Possible Defenses

Not all of the violations of the Environmental Protection Act and the Chapter 7 Solid Waste Rules are directly attributable to the poor operating performance of SCA. The poor hydrogeology of the site is undoubtedly the cause of many of the operating difficulties SCA has encountered. Although the hydrogeologic factors certainly justify the cessation of operations, reliance upon them will be attacked in any action taken to revoke SCA's operating permit. SCA may very well argue in a revocation action that such a severe sanction should only be sought when the operator is solely responsible for the violations (see Rule 212 of Chapter 7). Here, many of the violations are due to circumstances

beyond SCA's control, namely, the hydrogeology of the site. SCA may argue that it should not be so severely penalized for violations it cannot avoid. SCA may also contend that the hydrogeology of the site is not as unsound as the Agency makes it appear, thus setting up a battle of expert witnesses.

If the Agency does not attempt revocation of SCA's operating permit, many of SCA's defenses are vitiated. SCA will no doubt contend that it makes every effort to comply with the permit violations as well as the Rules and Regulations of the Board, but this is nothing more than a factor in mitigation. SCA may also disagree with the Agency's interpretation of Chapter 7. However, it is well settled that in interpretation of administrative rules, the administrative construction is controlling (Cf. May v. Pollution Control Board (1976), 35 (Board interpretation of Chapter 3 Rule) Ill. App. 3d 930, 342 N.E. 2d 784). No matter what form of relief is sought, a difficult legal battle is envisioned.

VI. Suggested Relief and Compliance Costs

The Agency should seek revocation of operating permit 1978-23-OP. The Agency should also seek an order requiring SCA to remove all barrels currently encapsulated in a trench in the special waste area, as well as a minimum penalty assessment of \$25,000. Collinsville FOS has calculated the cost of expenditures avoided by non-compliance from 12/18/78 to 3/27/79, and from 1/10/80 to 4/14/81 to be nearly \$25,000 (21 Inspection Reports). In the event no revocation is sought, the Agency should still seek removal of the barrels from the special waste area and a minimum

penalty assessment of \$25,000. The Agency suggests that negotiations begin at \$50,000. The maximum statutory penalty for the violation referenced herein is in excess of \$1 million.

Naturally, if the Agency seeks revocation, the case must be filed before the Board. However, if this remedy is not pursued, the Circuit Court of St. Clair County should be considered as a forum.

VII. Enforcement Priority

This case should be given high enforcement priority.

VIII. Witness List

Agency Witnesses

1. Kenneth Mensing
Manager, DLPC-FOS/Collinsville Region
113 West Main
Collinsville, Illinois 62234
2. Perry Mann
DLPC/FOS Collinsville Region
113 West Main
Collinsville, Illinois 62234
3. Pat McCarthy
DLPC/FOS Collinsville Region
113 West Main
Collinsville, Illinois 62234

Appendix

This Appendix is comprised of five sections:

- I. Permits
- II. Inspection reports and related correspondence
- III. Documents relating to the hydrogeology of SCA/Milam, particularly at the special waste site
- IV. Open Dump Inventory (ODI) documents
- V. Penalty Computation

I. Permits

<u>Document</u>	<u>Page</u>
Operating Permit 1978-23-OP	1
Supplemental Permit 1978-2080 (to develop special waste area)	13
Supplemental Permit 1978-2217 (to operate special waste area)	14

II. Inspection Reports and Related Correspondence

Inspection Report -- 12/18/78	15
Inspection Report -- 12/20/78	20
Inspection Report -- 12/21/78	25
Telephone Conversation Record -- 12/20/78	26
Inspection Report -- 12/22/78	27
Inspection Report -- 12/28/78	29
Letter; FOS to SCA -- 12/29/78	30
Telephone Conversation Record -- 1/4/79	32

ADDENDUM

On September 1, 1982, Joe Podlewski, Ken Mensing, and Perry Mann of the IEPA met with representatives of SCA in Collinsville for the purposes of satisfying the requirements of Section 31(d) of the Act. The Agency took the position that due to the operating and permit violations existing at the site since it received its permit in 1978, and the site's extremely poor hydrogeology, it was seeking cessation of landfilling operations in Phase II and exhumation of the barrels encapsulated in the Special Waste Area. At this time SCA offered a "compromise." It would agree to removal of the barrels and closure of Phase II if the Agency would allow the reopening of the "old site" south and west of Old Cahokia Creek. This "old site" has been the subject matter of previous litigation, including a bond forfeiture action that has yet to be terminated. SCA was informed that due to the Attorney General's involvement with the "old site," the Agency could not then agree to closure of the entire Milam site as a package, even if reopening of the "old site" was technically desirable.

The Agency deems cessation of landfilling in Phase II and exhumation of the barrels in the Special Waste Area to be of utmost importance. Although reopening of the "old site" is not an idea that should be rejected summarily, the problems at Milam should not be exacerbated while negotiations concerning closure of the old site take place. The problems with the new site and the old site should be dealt with separately. The Agency will only consider closure of the entire Milam site as a package if cessation of landfilling in Phase II and exhumation of the barreled paint waste is regarded as a condition precedent to reopening of the old site, and not vice versa.

Finally, the subject of a penalty was addressed at the Section 31(d)

meeting. One of the SCA representatives, Darrah Moore, stated that he "bristled" at the idea of a penalty. SCA considers past violations to be the responsibility of a previous management group, and feels that the "new SCA" should not be held liable for its transgressions. No penalty figure was discussed.